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A.F.R.

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench : Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

W.P.(C).No. 5107 of 2006

Petitioner : Bajaj Allianz General Insurance Company Ltd., Shiv Mohan Bhawan, Vidhan Sabha Marg, Pandri, Raipur, Tehsil & Dist : Raipur (C.G.) Local Address : Near Bajpai Towers, Rajendra Nagar Chowk, Bilaspur, Dist : Bilaspur

Versus

Respondents :
1. Smt. Hiraundi Devi Mahilange, Aged about 28 years, Wd/o Late Shri Balram Mahilange.
2. Amit Kumar, Aged about 8 years, S/o Late Balram Mahilange.
3. Ku. Neha, Aged about 6 years, D/o Late Shri Balram Mahilange.
4. Sumit Kumar, Aged about 3 years, S/o Late Balram Mahilange.

Respondent No.2 to 4 Minor represented through Natural Guardian Mother Respondent No.1 Smt. Hiraundi Devi Mahilange, Caste-Satnami, R/o Mulmula, Present Address : Jarhabhata, Bilaspur, Tehsil & Dist : Bilaspur-(C.G).

WRIT PETITION U/A 227 OF THE CONSTITUTION OF INDIA

Present:

Shri Sachin Singh Rajput, counsel for the petitioner.
Shri Ravindra Agrawal, counsel for the respondents.

ORDER

(Passed on this 1st day of October, 2007)

In this writ petition, the order dated 01.08.2006 passed by 8th Motor Accident Claims Tribunal (F.T.C.) Bilaspur (hereinafter referred to as the

M.A.C.T.) in Claims Case No.53 of 2006 whereby the objection relating to maintainability of the application under Section 163 (A) of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) was turned down, is under challenge.

2. Brief undisputed facts are that on 29.11.2005 Balram Mahilange, owner of the Hero Honda Super Splendor motor cycle met with an accidental death while driving the said motor cycle, which was insured under a policy of insurance issued by the petitioner whereunder besides covering third party risk, personal accident risk cover of the owner/driver to the extent of Rs.1,00,000/- was also provided.

3. The widow and three minor children of the deceased filed an application under section 163-A of the Act. In the said application, it was not mentioned as to how the accident occurred. Compensation of Rs.10,80,000/- was claimed.

4. In its written statement, the petitioner filed an objection that the liability of the insurance company was only to indemnify the insured against third party claims, and therefore, the insurance company was not liable to pay compensation to the legal representatives of the owner who, while driving the vehicle, had met with an accidental death.

5. Placing reliance on ***Dhanraj*** **vs.** ***New India Insurance Co. Ltd. and another,*** **2004 (8) SCC 553,** the M.A.C.T. rejected the objection raised by the petitioner on the ground that the policy issued by the petitioner covered the personal accident risk of the owner/driver.

6. The main thrust of the argument advanced by Shri Sachin Singh Rajput, learned counsel for the petitioner is that under Section 147 of the

Act, the insurance company is under a statutory liability only to indemnify the insured and not to cover the risk of the owner/driver of the vehicle. So far as the personal accident risk cover granted by the petitioner under the policy of insurance is concerned, it was purely a contractual liability between the petitioner and the insured for which the appropriate forum is the Consumers Disputes Grievances Redressal Forum.

7. Reliance was placed on ***Oriental Insurance Co. Ltd.*** **vs.** ***Sunita Rathi & Ors.,*** **1998 SAR (Civil) 69** for the proposition that liability of the insurer arises only when liability of the insured has been upheld, for the purpose of indemnifying the insured under the contract of insurance. Reliance was further placed on ***Oriental Insurance Co. Ltd.*** **vs.** ***Meena Variyal & Ors.,*** **AIR 2007 SC 1609,** ***Dhanraj*** **vs.** ***New India Assurance Co. Ltd. and another,*** **AIR 2004 SC 4767,** ***Saheblal Chandra and another*** **vs.** ***Bhudayal Chandra and another,*** **2007 L.T. (CG) 60,** ***Beesaha*** **vs.** ***United India Insurance Co. Ltd.,*** **2007 L.T. (CG) 116,** ***Oriental Insurance Co. Ltd.*** **vs.** ***Smt. Jhuma Saha and others,*** **2007 AIR SCW 859 : 2007 SAR (Civil) 148** and ***Smt. Urmilla Bai & others*** **vs.** ***Policy Issuing Office, Branch Manager, The Oriental Insurance Company Limited,*** a decision rendered in M.A.(C).No. 159 of 2007 on 13.02.2007.

8. On the other hand, Shri Ravindra Agrawal, learned counsel for the respondents placed reliance on ***Smt. Kunti Ahirwar and others*** **vs.** ***State of M.P. and others,*** **2007 (1) M.P.H.T. 390 (DB)** wherein it was held that where a policy of insurance covers the personal accident risk of the owner, an application by the owner of a vehicle or his legal representatives would lie before the M.A.C.T. for compensation subject to

any limit given in the policy. Reliance was also placed on ***Smt. Sheela Bai and others*** **vs.** ***The New India Insurance Co. Ltd.,*** **2007 (2) M.P.H.T. 52 (CG)** and ***Dhanraj*** **vs.** ***New India Assurance Company limited and another,*** **(2004) 8 SCC 553** wherein it was held that in case of an owner driven vehicle a claim would lie before the M.A.C.T. by the legal representatives of the owner only if a personal accident insurance cover is provided in the policy.

9. Having considered the rival submissions, I am of the considered opinion that the question involved in this petition is squarely covered by the decision of the Apex Court in **Dhanraj** (supra). In paragraphs 8, 9 and 10, the Apex Court observed as under:

> "**8.** Thus, an insurance policy covers the liability incurred by the insurer in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.
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> **9.** In the case of *Oriental Insurance Co. Ltd.* v. *Sunita Rathi [(1998) 1 SCC 365 :·1998 ACJ 121]* it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.
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> **10.** In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4989 paid under the heading "Own damage', is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. <u>An owner of a vehicle can only claim provided a personal accident insurance has been taken out</u> (emphasis supplied by me). In this case there is no such insurance."

10. The decision of the Apex Court in the case of **Dhanraj** (supra) was followed by a Division Bench of this High Court in **Smt. Sheela Bai and others** (supra) wherein it was held that the liability of the insurance company is only to indemnify the owner of the vehicle; therefore, in absence of insurance to cover personal injuries of the vehicle of the owner (emphasis supplied by me), or for the death of owner as a result of accident out of the use of motor vehicle , his legal representatives are not entitled for compensation.

11. In **Smt. Kunti Ahirwar and others vs. State of M.P. and others** (supra), a Division Bench of the High Court of Madhya Pradesh, considering an exactly similar situation held as under:

> "..... There is no prohibition that the insurer cannot issue a policy in favour of the insured. In the case of *Dhanraj* (supra), their Lordships in no uncertain terms have held that the owner of a vehicle can only claim provided personal accident, insurance has been taken. Once the insurance policy a privity contract, covers the owner for his own risk, it is not against the statute. It is a statutory contract within the ambit and sweep of the Act. The owner can put forth a claim for his bodily injuries. If he can put forth his claim for bodily injuries, it is needless to emphasise the legal representatives, by a logical corollary, can put forth an application before the Motor Accidents Claims Tribunal inasmuch as the policy is issued under the Act. The Division Bench in the case of *P.N.Vijaiwargiya* (supra),* has also opined that a claim in respect of an accident involving death relating to insured is tenable before the Tribunal. Section 165 (1) of the Act uses the word 'injury to a persons arising out of the use of motor vehicles'. Section 147 of the Act covers statutory liability though it does not extend to the owner of a vehicle. But, a significant one, an owner of the vehicle can put forth a claim in case it is specifically covered by the policy. In the case at hand, it is patent, personal insurance policy was taken by the owner to cover his own risk. The liability is limited to Rs.1,00,000/-. We fail to fathom why the Accident Claims Tribunal cannot entertain the same and legal representatives should be asked to approach any other legal forum. Thus, the issue of maintainability raised by Mr. Nair is not acceptable and we have no hesitation in repelling the same."
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> **[New India Assurance Co. Ltd. Vs. P.N.Vijaiwargiya and others, 1992 ACJ 312 (MP)*

12. The Motor Accidents Claims Tribunals are constituted under Section 165 (1) of the act which reads as under:

> **"165. Claims Tribunals.-** (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter in this Chapter referred to as Claims Tribunals) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. (emphasis supplied by me)
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> *Explanation.-* For the removal of doubts, it is hereby declared that the expression 'claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under section 140 [and section 163A].

13. It is pertinent to note that whereas in Section 165 (1) the Act the words "damages to any property of a third party" have been used, it has used the words "the death of or bodily injury to, persons" instead of "the death of or bodily injury to third party". The intention of the Legislature in omitting the words "to third party" and instead using the words "to persons" is clearly to include within its ambit a case where the insurance company has, while issuing the policy of insurance under section 147 of the Act, covered a contractual liability i.e. personal accident risk of the owner/driver.

14. Section 147 (1) of the Act provides the requirements of policies and limits of liability and reads as under:

> **"147. Requirements of policies and limits of liability.-** (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—
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> (a) is issued by a person who is an authorized insurer; or
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> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorized representative carried in the vehicle] or damage to any property of a third party caused by a or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by a or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arise out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

Under the proviso to sub-clause (ii) of sub-section (1) of Section 147 of the Act, a policy of insurance need not statutorily cover any contractual liability. However, where a policy of insurance issued under Section 147 (1) of the Act does provide personal accident risk cover, the Motor Accidents Claims Tribunal in such a case does not cease to have

jurisdiction under Section 165 of the Act to entertain an application for compensation under section 163-A of the Act.

15. In the light of the observations made above, the issue of maintainability raised by Shr Sachin Singh Rajput, learned counsel for the petitioner, falls to the ground. Accordingly, the petition being devoid of merit is dismissed.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Anjani